

FILED

IN THE UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
FOR THE DISTRICT OF NEW MEXICO

MAR 10 2004

ALFONSO HERNANDEZ-FLORES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Respondent.


CLERK

No. CV-04-0114 JB/LFG

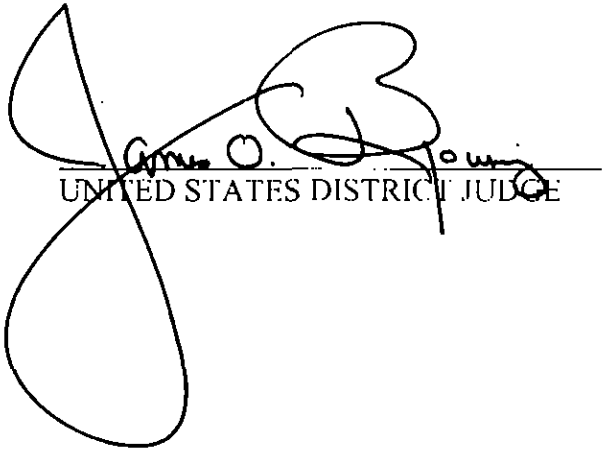
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's "Petition requesting permission to proceed under title U.S.C. § 2241, to vacate, set aside, or correct sentence." The Plaintiff was convicted and sentenced in the Southern District of Iowa. He asserts that his attorney provided ineffective assistance at sentencing, and he asks that the Court vacate his sentence and reduce the sentence accordingly.

Because this Court did not convict the Plaintiff or impose sentence, he may not prosecute his claim here. "It is well established that § 2255 is the 'exclusive remedy for testing the validity of a judgment and sentence, unless it is inadequate or ineffective' and that such an action must be brought in the district court which imposed the sentence. A petition under § 2241, on the other hand, 'attacks the execution of a sentence' and 'is not an additional, alternative, or supplemental remedy' to a § 2255 proceeding." *Fuller v. United States*, No. 97-1277, 1998 WL 3467, at **1 (10th Cir. Jan. 6, 1998) (citations omitted). "The purpose of section 2255 is to provide a method of determining the validity of a judgment by the court which imposed the sentence, rather than by the court in the

district where the prisoner is confined.” *Johnson v. Taylor*, 347 F.2d 365, 367 (10th Cir. 1965). The Court will dismiss the Plaintiff’s petition without prejudice to his right to pursue his claims in an appropriate forum.

IT IS THEREFORE ORDERED that the Plaintiff’s “Petition requesting permission to proceed under title 28 U.S.C. § 2241, to vacate, set aside, or correct sentence” is DENIED without prejudice; and, pursuant to rule.58(a)(2)(A)(iii) of the Federal Rules of Civil Procedure, *United States v. Sam*, No. 02-2307, 2003 WL 21702490, at *1 (10th Cir. July 23, 2003), judgment will be entered in accordance with this opinion.



UNITED STATES DISTRICT JUDGE